SUPREME COURT, U. S.

No. 229

Office-Supreme Court, U.S.
FILED
JUL 23 1968
JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1968

EDWARD STEVE MCFARLAND, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,

FRED M. VINSON, JR.,
Assistant Attorney General,

BEATRICE ROSENBERG,
EDWARD FENIG,
Attorneys,
Department of Justice,
Washington, D. C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 229

EDWARD STEVE MCFARLAND, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the Eastern District of Kentucky, petitioner and three co-defendants were convicted on two counts of an indictment which charged conspiracy to transport a female in interstate commerce for immoral purposes, and a substantive violation of the Mann Act (18 U.S.C. 2421). On September 29, 1966, petitioner and the others were sentenced to five years' imprisonment. The court of ap-

peals, in a *per curiam* opinion (Pet. App. A; 392 F.2d 192), affirmed.

The evidence showed that petitioner arrived in the Cincinnati area on October 10, 1965, with co-defendants Day and Muncy, and planned to return to Chicago two days later (R. 257). On October 11, in the Cincinnati area, co-defendant Thompson, who used the name Valo, befriended and had sexual relations with Sharon Stumpe, then 16 years old (R. 84-86, 94, 159-161). The following day, across the Ohio River in Covington, Kentucky, Thompson introduced the girl to Day and Muncy, who used the name Edwards (R. 94-95, 165). Shortly thereafter Day told Miss Stumpe that if she went to Chicago she would have to engage in prostitution and split the proceeds with "them" (R. 108).

Petitioner joined the group at a girl's house in Covington (R. 101, 181-182). Miss Stumpe testified that he was present when the trip to Chicago was discussed (R. 118), but also said he was not there when prostitution was discussed (R. 149). After petitioner arrived, the group did not leave Kentucky for some hours (R. 105).

The four men and Miss Stumpe were to leave Kentucky for Chicago in two vehicles, with petitioner driving a Mustang (R. 108). Before departing, petitioner said: "I am not taking any girl across a state line in my car" (R. 149-150). When they left, petitioner drove the Mustang (R. 175), accompanied by Day and Muncy (R. 109), while Miss Stumpe rode with Thompson in the second car (R. 151). At some point en route the group stopped to eat and the girl

changed cars (R. 109, 152, 168). Petitioner was with Miss Stumpe in the Mustang when they stopped at a motel for the evening, presumably in Illinois but possibly in Indiana (R. 133). There petitioner and two of the co-defendants had sexual relations with the girl (R. 111).

Upon arriving in Chicago the next day, the group looked for hotel accommodations (R. 111). A three-room apartment was rented to two of the men, who paid $25 in advance for one week (R. 218). Petitioner and co-defendant Muncy stayed with Miss Stumpe all day (R. 112). The next day, petitioner and Muncy took her out of the hotel in order to buy her some clothes (R. 113). The three were arrested by a Chicago police officer (R. 196), who stopped the group because of Miss Stumpe's apparent youth (R. 212) and a report he had received concerning a runaway girl (R. 208). Day was arrested at the hotel (R. 205, 213).

ARGUMENT

Petitioner's sole contention is that the evidence was insufficient to support his conviction. On the instant facts, however, the jury was justified in finding that petitioner was a knowing participant in the scheme to transport Miss Stumpe from Kentucky to Illinois for purposes of prostitution. The trial judge, instructing on the need to find venue in the Eastern District of Kentucky (R. 326-327), told the jury that in order to convict, they had to find as to each defendant that the criminal intention existed before he left the Eastern District of Kentucky. Despite Miss Stumpe's

confusion as to whether petitioner was present when Day first broached the subject of prostitution, the jury could find that petitioner did in fact know before the trip started why she was being taken to Chicago. Indeed, the testimony on which he relies—that he said he was not taking any girl across a state line in his car (Pet. 6, 11-12)—shows that he was aware that the transportation was for an immoral purpose. In addition, petitioner's actions in Chicago immediately after Miss Stumpe was brought there—the search for cheap hotel accomodations, the type of apartment taken, and the effort to buy her clothes—indicate that petitioner was expending time and money in accordance with a previously existing intent.[1]

The fact that petitioner planned to return to Chicago, before meeting Miss Stumpe, does not diminish his culpability (Pet. 14). In regard to the girl's transportation from Kentucky to Illinois, the group's dominant motive, if not the exclusive one, was prostitution. That is all the Mann Act requires. See *United States* v. *Salter*, 346 F.2d 509 (C.A. 6), certiorari denied, 383 U.S. 943. Considering the circumstances, the jury could properly find that there was no benign purpose in that transportation, such as giving Miss Stumpe a vacation. See *Mortensen* v. *United States*, 322 U.S. 369. Actual fulfillment of the immoral purpose was of course not necessary for

[1] As the court below stated (Pet. App. 19), "The jury had the right to reasonably conclude, both from McFarland's conduct before the parties left Kentucky and afterwards, that he was a party to the conspiracy from the outset."

a violation of the Act. *Wilson* v. *United States*, 232 U.S. 563, 571. Accordingly, since petitioner was properly convicted, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

FRED M. VINSON, JR.,
Assistant Attorney General.

BEATRICE ROSENBERG,
EDWARD FENIG,
Attorneys.

JULY 1968.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1968 313881 43